

MAINE'S FREEDOM OF ACCESS LAW AND THE CONDUCT OF COMMITTEE BUSINESS

A Summary of Legislative Issues

Prepared by the
Office of Policy & Legal Analysis, Maine State Legislature
November 2006

The Maine Freedom of Access law requires governmental entities to conduct public business in the open and to provide access to public records. Legislative committee meetings and records are subject to the law and must be open to the public, with some limited exceptions set forth in the law.

INTENT OF THE FREEDOM OF ACCESS LAW

According to the Maine Freedom of Access law, it is the intent of the Legislature that “actions [involving the conduct of the people’s business] be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.” The Freedom of Access law, found in Title 1 of the Maine Revised Statutes, chapter 13, applies to most governmental entities, including the Legislature.

PUBLIC PROCEEDINGS

Under state law, meetings of the joint standing committees and of legislative subcommittees are public proceedings. A legislative subcommittee is a group of 3 or more committee members appointed for the purpose of conducting legislative business on behalf of the committee.

The public must be given notice of public proceedings and must be allowed to attend. The public is also allowed to record the proceedings provided the activity does not interfere with the orderly conduct of the proceedings.

LIMITED EXCEPTION TO PUBLIC PROCEEDINGS (EXECUTIVE SESSIONS)

In very limited situations, joint standing committees may hold executive sessions to discuss certain matters. State law is quite specific as to those matters that may be deliberated in executive sessions. The executive session must not be used to defeat the purpose of the Act, which is to conduct the people’s business in the open.

The permitted reasons for executive session are set forth in the law, Title 1, section 405 and Title 3, section 156. The reasons most relevant to legislative work are discussion of confidential records and pre-hearing conferences on confirmations.

The following provisions govern the calling and conduct of executive sessions:

- ❑ Executive sessions may be called only by a public, recorded **vote** of 3/5 of the members, present and voting, of the committee.

- ❑ The **motion** to go into executive session must indicate the precise nature of the business to be discussed and no other matters may be discussed.
- ❑ **No votes** or other official actions may be taken in executive sessions.

If a committee wants to hold an executive session, the committee should discuss the circumstances with a lawyer from the Office of Policy and Legal Analysis who can provide the committee with guidance about whether an executive session is permitted and, if so, how to proceed.

PUBLIC RECORDS

The Freedom of Access law defines “public records” broadly, to include all material in possession of public agencies, staff and officials if the materials were received or prepared for use in, or relate to, the transaction of public or governmental business. The scope of the definition means that most, if not all, papers relating to legislative business are public records.

TIME-LIMITED EXCEPTION FROM PUBLIC DISCLOSURE FOR CERTAIN LEGISLATIVE RECORDS

However, the Freedom of Access law contains exceptions to the general rule that public records must be made available for public inspection and copying. One exception that is relevant to legislative work allows certain legislative papers to be withheld from public disclosure until the end of the legislative session in which they are being used. The exceptions are as follows:

- ❑ Legislative papers and reports (e.g. bill drafts, committee amendments and the like) are not public records until signed and publicly distributed; and
- ❑ Working papers, drafts, records, and memoranda used to prepare proposed legislative papers or reports are not public records until the end of the legislative session in which the papers or reports are prepared or considered or to which they are carried over.

The Legislative Council’s Confidentiality Policy and the Joint Rules provide guidance to legislative staff about how such records are to be treated before they become public records.

CONFIDENTIAL RECORDS IN THE POSSESSION OF COMMITTEES

Committees may also need to be prepared to deal with other types of non-public records, such as individual medical or financial records that are classified as confidential under state or federal law.

If the committee comes into possession of records that are declared confidential by law, the Freedom of Access law allows the committee to withhold those records from the public and to go into executive session to consider them (see discussion above for the proper process).

In addition, the committee should also find out whether there are laws that set specific limitations on, and penalties for, dissemination of those records. The Office of the Attorney General or an attorney from OPLA can help the committee with these records.

Joint Rule 313 also sets forth procedures to be followed by a committee that possesses confidential records.

G:\OPLAGENL\PROJECTS\Orientation-- 122nd\FOA with borders.doc(11/7/2006 8:23:00 AM)